IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CE,CUSTOMS GOLD CONTROL REF. No 2 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMM. OF CENTRAL EXCISE

Versus

MANEKLAL HARILAL MILLS & INDS.LTD.

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Appearance:

MR ASIM PANDYA for Petitioner

NANAVATI ASSOCIATES for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. The aforesaid Reference is made by the Customs Excise & Gold (Control) Appellate Tribunal, Western Region Bench, Mumbai, at the behest of the Commissioner of Central Excise, Ahmedabad.

#. At the time of hearing, learned Standing Counsel Mr. Asim Pandya appears on behalf of the applicant. He submits that the Reference is made under Section 35(G) of the Central Excise Act, 1944 (hereinafter to be referred to as "the Act"). It is pertinent to note that though the Reference was made in the month of May, 2000 and the Registry of this Court intimated on 12th February, 2001 to the applicant to supply paperbook as prescribed in Rule 204 read with Rule 205 of Chapter XIX of the Gujarat High Court Rules, 1993, till date, no paperbook has been submitted on behalf of the applicant.

#. However, it is not possible to render any opinion on the Reference in the absence of any question of law stated to be referred by the Tribunal in the Statement of Case. Section 35G of the Act reads as under.

"SECTION 35G. Statement of case to High Court.--

(1) The Commissioner of Central Excise or the other party may, within sixty days of the date upon which he is served with notice of an order under Section 35C passed before the 1st day of July, 1999 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court;

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days." (emphasis supplied)

As is apparent from a plain reading of the provision, it is necessary that the Tribunal refers to the High Court a

question of law arising out of the order of the Tribunal. In the present case, no question of law having been referred by the Tribunal, there is no reference in fact made on which this Court can render any opinion.

#. Hence, on both the counts, namely non-filing of the paperbook and question of law not having been referred, this Reference is rejected as being no Reference in the eye of law as required under the provisions of the Act. The Reference is disposed of accordingly with no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

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